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Special Litigation Counsel for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

BK-S-06-10728-LBR
BK-S-06-10729-LBR

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,

Debtor.

JOINTLY ADMINISTERED
Chapter 11 Cases

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

Judge Linda B. Riegle

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

1 USACM LIQUIDATING TRUST,

2 Plaintiff,

3 v.

4 ROBERT A. RUSSELL; DEBORAH RUSSELL;
5 RUSSELL AD DEVELOPMENT GROUP, LLC;
6 COPPER SAGE COMMERCE CENTER LLC;
7 FREEWAY 101 USA INVESTORS, LLC;
8 BOISE/GOWEN 93, LLC; DER NV INVESCO, LLC;
9 FWY 101 LOOP RAR INVESTMENT, LLC; and
10 BG/93 INVESTMENTS, LLC; SVRB INVESTMENTS,
11 LLC,

12 Defendants.

Adversary No. 08-01119

**AMENDED NOTICE OF
HEARING ON MOTION
SEEKING THE APPROVAL OF
THE SETTLEMENT
AGREEMENT BETWEEN THE
USACM LIQUIDATING TRUST
AND THE RUSSELL ENTITIES**

Hearing Date: August 21, 2009
Hearing Time: 9:30a.m

13 **NOTICE IS HEREBY GIVEN** that a Motion for Approval of Settlement Pursuant to
14 Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Motion”) was filed on June 24,
15 2009 by the USACM Liquidating Trust (the “USACM Trust”) [Dkt. No. 7205]. The Motion
16 seeks entry of an order approving the proposed settlement between the USACM Trust and the
17 following entities: Robert A. Russell, Deborah Russell, Interstate Commerce Center, LLC,
18 Unser/Central Partners, LLP, AD Albuquerque Development, LLC, Russell A D Development
19 Group, LLC, Copper Sage Commerce Center LLC, Freeway 101 USA Investors, LLC,
20 Boise/Gowen 93, LLC, DER NV Invesco, LLC, Fwy 101 Loop RAR Investment, LLC, BG/93
21 Investments, LLC, and SVRB Investments, LLC (collectively, “**the Russell Entities**”).

22 Following extensive arms-length negotiations the USACM Liquidating Trust and
23 Defendants reached a tentative agreement to resolve the Pending Litigation subject to execution
of a mutually-agreeable settlement agreement that is approved by the Bankruptcy Court. The
material terms of the Proposed Settlement are summarized as follows¹:

¹ The following is solely a summary of the terms of the Proposed Settlement, and in no way is intended as an amendment, modification, or supplementation of the Proposed Settlement terms. The terms of the confidential written settlement agreement between the Parties shall prevail in the event of any conflict with this summary.

Settlement Consideration.

- The Russell Entities shall pay \$7,500 to the USACM Trust upon the Effective Date of this Agreement.
- On or before the Effective Date of this Agreement, the Russell Entities shall withdraw the Proofs of Claim, as well as any and all other proof(s) of claim any Russell Entity may have filed in the USACM bankruptcy, without the right to assert later that such claims should participate in any distribution to allowed unsecured creditor claims.
- On or before the Effective Date of this Agreement, Robert A. Russell shall execute a promissory note payable to the USACM Trust in the amount of \$20,000 (the “**Promissory Note**”). The Promissory Note shall be a two-year, non-interest-bearing note. Robert A. Russell shall be the only obligor on the Promissory Note. If the Promissory Note is paid in full within 18 months of its execution, the amount due shall be reduced to \$15,000. In conjunction with the execution of the Promissory Note, Robert A. Russell shall also consent to a stipulation of judgment against Robert A. Russell in the amount of \$25,000 in favor the USACM Trust (“**Stipulation of Judgment**”). Counsel for the USACM Trust, the law firm of Diamond McCarthy, LLP, shall hold the Stipulation of Judgment without filing it.
- If the Promissory Note is paid in full within 2 years of its execution, Counsel for the USACM Trust shall return the Stipulation of Judgment to counsel for Robert A. Russell, Scott McGath. If the Promissory Note is not paid in full within 2 years of its execution, the Stipulation of Judgment shall be filed and execution shall issue upon the Judgment.

Effective Date.

“Effective Date” means the first business day which is eleven (11) days after entry of an order by the Bankruptcy Court in the USACM Bankruptcy Case authorizing the USACM Trust to enter into the Agreement (the “Approval Order”). Unless otherwise ordered by a court, the Effective Date will occur on the first business day which is more than ten (10) days after entry of the Approval Order notwithstanding any pending appeal commenced by one of the Parties or any third-party. If any stay is imposed as to the effectiveness of this Agreement as a result of an appeal, upon written notification to the other Parties, either Party may deem this agreement void and nonbinding on the Parties.

Releases.

- Release of Claims by the USACM Trust. Upon the Effective Date, the USACM Trust fully releases and discharges the Russell Entities, individually and collectively,

and all of their present and former principals, employees, staff, predecessors and successors, and their respective attorneys, consultants, adjustors and insurers in their capacities as such, from any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity. This release includes all claims that the USACM Trust ever had or now has against the Russell entities, provided, however, that the USACM Trust does not release the Russell Entities from any obligations under this Agreement (the “**USACM Released Claims**”).

- Release of Claims by DTDF. Upon the Effective Date, DTDF fully releases and discharges the Russell Entities, individually and collectively, and all of their present and former principals, employees, staff, predecessors and successors, and their respective attorneys, consultants, adjustors and insurers in their capacities as such, from any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity. This release includes all claims that DTDF ever had or now has against the Russell entities, provided, however, that DTDF does not release the Russell Entities from any obligations under this Agreement (the “**DTDF Released Claims**”).
- Release of Claims by the Russell Entities. Upon the Effective Date, each one of the Russell Entities, individually and collectively, on behalf of all of their present and former principals, employees, staff, predecessors and successors, and their respective attorneys, consultants, adjustors and insurers in their capacities as such, fully releases and discharges USACM, the USACM Trust, the USACM Trustee, DTDF, the DTDF Manager, and all of their present and former trustees, managers, employees, agents, consultants, attorneys, directors, and officers, and their respective insurers in their capacities as such from any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity. This release includes all claims that the Russell entities, ever had or now have against the USACM, the USACM Trust, the USACM Trustee, DTDF, the DTDF Manager, provided, however, that the Russell Entities do not release USACM, the USACM Trust, the USACM Trustee, DTDF, and the DTDF Manager, from their obligations under this Agreement (the “**Russell Entities Released Claims**”).

NOTICE IS FURTHER GIVEN that if you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views on the Motion, then you must file an opposition with the Court, and serve a copy on the person making the Motion ***no later than 15 days*** after the date of this Notice. If the hearing date has been set on less than 15 days’ notice, then the opposition must be filed and served ***no later than 5 business days*** before the hearing. The opposition must state your position, set forth all relevant facts and legal authority, and be supported by affidavits or declarations that conform to Local Rule 9014(c).

1 If you object to the relief requested in the Motion, you ***must*** file a **WRITTEN** response
2 to the Motion with the Court. You ***must*** also serve your written response on the person who sent
3 you this notice.

4 If you do not file a written response with the Court, or if you do not serve your written
5 response on the person who sent you this notice, then:

- 6 • The Court may *refuse to allow you to speak* at the scheduled hearing; and
- 7 • The Court may *rule against you* without formally calling the matter at the hearing.

8 **NOTICE IS FURTHER GIVEN** that the hearing on the said Motion will be held before
9 the Honorable Linda B. Riegle, United States Bankruptcy Judge, in the Foley Federal Building,
10 300 Las Vegas Boulevard South, Third Floor, Bankruptcy Courtroom No. 1, Las Vegas, Nevada
11 89101 on **Friday, August 21, 2009, at 9:30 a.m.**

12 DATED this 9TH day of July 2009.

13 **DIAMOND MCCARTHY LLP**

14 By: /s/ Eric D. Madden
Allan B. Diamond, TX 05801800 (pro hac vice)
15 Barbara Balliette, TX 00788660 (pro hac vice)
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18 *Special Litigation Counsel for*
19 *USACM Liquidating Trust*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of DIAMOND MCCARTHY LLP, and that on the 9TH day of July 2009, I served a true and correct copy of the foregoing **AMENDED NOTICE OF HEARING ON MOTION SEEKING THE APPROVAL OF THE SETTLEMENT AGREEMENT BETWEEN THE USACM LIQUIDATING TRUST AND THE RUSSELL ENTITIES** (a) by electronic transmission to (i) all parties on the USACM Post-Effective Date Service List Dated March 31, 2009 and (ii) counsel for the Russell Entities, Scott A. McGath at sam@omhdlaw.com.

/s/ Catherine A. Burrow, CLA
Catherine A. Burrow, CLA
Diamond McCarthy LLP